

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

Dec 03, 2009

**FILED
CLERK'S OFFICE**

**IN RE: APPLE IPHONE 3G AND 3GS "MMS"
MARKETING AND SALES PRACTICES LITIGATION**

MDL No. 2116

TRANSFER ORDER

Before the entire Panel*: Before the Panel are two motions that collectively encompass twelve actions: three actions in the Northern District of Ohio, two actions each in the Central District of California and the Northern District of California, and one action each in the Southern District of California, Southern District of Illinois, Eastern District of Louisiana, District of Minnesota, and Eastern District of Missouri as listed on Schedule A.¹

Common defendant AT&T Mobility LLC (AT&T) moves, pursuant to 28 U.S.C. § 1407, for coordinated or consolidated pretrial proceedings of certain of these actions in the Northern District of Ohio or, in the alternative, the Eastern District of Louisiana. Similarly, plaintiffs in the two Northern District of California actions and the Southern District of California action move, pursuant to Section 1407, for coordinated or consolidated pretrial proceedings of the actions in the Northern District of California.

Plaintiffs in the remaining nine actions responded in support of centralization in the Eastern District of Louisiana; however, at oral argument, plaintiff in one Northern District of Ohio action argued in support of centralization in the Northern District of Ohio and represented that other plaintiffs supported centralization in that district as well. Common defendant Apple Inc. (Apple) likewise supports centralization in the Northern District of Ohio.

On the basis of the papers filed and hearing session held, we find that these twelve actions involve common questions of fact, and that centralization under Section 1407 in the Eastern District

* Judges Heyburn and Damrell took no part in the decision of this matter.

¹ The parties have notified the Panel of three related actions pending, respectively, in the Southern District of Alabama, Eastern District of Michigan, and the Southern District of New York. These actions and any other related actions are potential tag-along actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

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- 2 -

of Louisiana will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. All actions share factual questions arising from the advertising and marketing of multimedia message service (MMS) functionality of Apple's iPhone 3G and 3GS supported by AT&T's 3G network. Plaintiffs in all actions allege that Apple and AT&T have engaged in deceptive marketing with respect to the availability of MMS functionality on the iPhone 3G and 3GS. Centralization under Section 1407 will eliminate duplicative discovery; prevent inconsistent pretrial rulings, particularly with respect to class certification issues; and conserve the resources of the parties, their counsel and the judiciary.

We are persuaded that the Eastern District of Louisiana is an appropriate transferee district for this litigation. Most plaintiffs and the moving defendant, in the alternative, support centralization in this district. Centralization in the Eastern District of Louisiana, where an action is pending, also permits the Panel to effect the Section 1407 assignment to an experienced transferee judge who is not currently presiding over another multidistrict litigation docket.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Eastern District of Louisiana are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Carl J. Barbier for coordinated or consolidated pretrial proceedings with the action listed on Schedule A and pending in that district.

PANEL ON MULTIDISTRICT LITIGATION



Robert L. Miller, Jr.
Acting Chairman

John G. Heyburn II, Chairman*
David R. Hansen
Frank C. Damrell, Jr.*

Kathryn H. Vratil
W. Royal Furgeson, Jr.
David G. Trager

**IN RE: APPLE IPHONE 3G AND 3GS "MMS"
MARKETING AND SALES PRACTICES LITIGATION**

MDL No. 2116

SCHEDULE A

LAED
SEC. J/2

Central District of California

Aida Kamarian v. Apple, Inc., et al., C.A. No. 2:09-6590	09-7602
Tim Williams, et al. v. Apple, Inc., et al., C.A. No. 2:09-6914	09-7603

Northern District of California

Philip Sterker v. Apple, Inc., et al., C.A. No. 4:09-4242	09-7604
Kevin Khoi Duy Tran v. Apple, Inc., et al., C.A. No. 5:09-4048	09-7605

Southern District of California

Arturo Molina v. Apple, Inc., et al., C.A. No. 3:09-2032	09-7606
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Southern District of Illinois

Tim Meeker v. Apple, Inc., et al., C.A. No. 3:09-607	09-7607
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Eastern District of Louisiana

Christopher Carbine, et al. v. Apple, Inc., et al., C.A. No. 2:09-5470	
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District of Minnesota

Kyle Irving v. Apple, Inc., et al., C.A. No. 0:09-2613	09-7608
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Eastern District of Missouri

Meredith Goette, et al. v. Apple, Inc., et al., C.A. No. 4:09-1480	09-7609
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Northern District of Ohio

Michael Pietrangelo v. Apple, Inc., et al., C.A. No. 1:09-1992	09-7610
Matthew Sullivan v. Apple, Inc., et al., C.A. No. 1:09-1993	09-7611
Deborah Carr v. Apple, Inc., et al., C.A. No. 1:09-1996	09-7612

**Judicial Panel on Multidistrict Litigation - Panel Service List
for
MDL 2116 - IN RE: Apple iPhone 3G and 3GS "MMS" Marketing and Sales Practices**

***** Report Key and Title Page *****

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more than one attorney. See Panel rule 5.2(c).

Party Representation Key

- * Signifies that an appearance was made on behalf of the party by the representing attorney.
 - # Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
- All counsel and parties no longer active in this litigation have been suppressed.

This Report is Based on the Following Data Filters

Docket: 2116 - Apple iPhone 3G and 3GS "MMS" Marketing & SP
For Open Cases

Judicial Panel on Multidistrict Litigation - Panel Service List

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Docket: 2116 - IN RE: Apple iPhone 3G and 3GS "MMS" Marketing and Sales Practices Litigation

Status: Transferred on 12/03/2009

Transferee District: LAE Judge: Barbier, Carl J.

Printed on 12/03/2009

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**IN RE: APPLE IPHONE 3G AND 3G-S "MMS" MARKETING
AND SALES PRACTICES LITIGATION**

MDL No. 2116

INVOLVED CLERKS LIST

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UNITED STATES JUDICIAL PANEL

on

MULTIDISTRICT LITIGATION

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MEMBERS:
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United States District Court
Northern District of Indiana

Kathryn H. Vratil
United States District Court
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DIRECT REPLY TO:

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December 3, 2009

Loretta G. Whyte, Clerk
U.S. District Court
500 Poydras Street
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Re: MDL No. 2116 -- IN RE: Apple iPhone 3G and 3GS "MMS" Marketing and Sales Practices Litigation

Dear Ms. Whyte:

Attached as a separate document is a certified copy of a transfer order that the Judicial Panel on Multidistrict Litigation issued today in the above-captioned matter. The order is directed to you for filing. Rule 1.5 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 428 (2001), states "A transfer or remand pursuant to 28 U.S.C. § 1407 shall be effective when the transfer or remand order is filed in the office of the clerk of the district court of the transferee district."

Today we are also serving an information copy of the order on the transferor court(s). The Panel's governing statute, 28 U.S.C. §1407, requires that the transferee clerk "transmit a certified copy of the Panel's order to transfer to the clerk of the district court from which the action is being transferred [transferor court]."

Rule 1.6(a), pertaining to transfer of files, states "the clerk of the transferor district court shall forward to the clerk of the transferee district court the complete original file and a certified copy of the docket sheet for each transferred action." **With the advent of electronic filing, many transferee courts have found that it is not necessary to request the original file. Some transferee courts will send their certified copy of the Panel order with notification of the newly assigned transferee court case number and inform the transferor courts that they will copy the docket sheet via PACER. Others may request a certified copy of the docket sheet and a copy of the complaint (especially if it was removed from state court). You should be specific as to the files you would like to receive from the transferor courts and if no files will be necessary, you should make that clear. Therefore, Rule 1.6(a) will be satisfied once a transferor court has complied with your request.**

You may find Chapter 7 of Volume 4 of the Clerks Manual, United States District Courts helpful in managing the MDL docket.

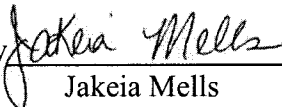
The Panel Clerk's Office maintains the only statistical accounting of multidistrict litigation traffic in the federal courts. Therefore, we would appreciate your cooperation in keeping the Panel advised of the progress of this litigation. We are particularly interested in receiving the docket numbers assigned to each transferred action by your court; the caption and docket numbers of all actions originally filed in your district; and copies of orders regarding appointment of liaison counsel, settlements, dismissals, state court remands, and reassignments to other judges in your district.

Your attention is also directed to Panel Rule 7.6, regarding termination and remand of transferred actions. Upon notification from your court of a finding by the transferee judge suggesting to the Panel that Section 1407 remand of a transferred action is appropriate, this office will promptly file a conditional remand order.

Attached to this letter, for your information, is a copy of the Panel Service List and a listing of the transferor court clerks with respect to this order.

Very truly,

Jeffery N. Lüthi
Clerk of the Panel

By 
Jakeia Mells
Deputy Clerk

Attachments (Transfer Order is a Separate Document)

cc: Transferee Judge: Judge Carl J. Barbier
Chief Judge Transferee District: Judge Sarah S. Vance